XI-HC-22

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1255 सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1255 OF 2002

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

Appellant : Santram, son of Shri Shivdayal, aged about 34 years, resident of village-Bar Bhanta, P.S. Sheorinarayan, Distt. Janjgir Champa (Chhattisgarh)

Versus

Respondent : State of Chhattisgarh

Presence:
Ms. Pushpa Dwivedi, , counsel for the appellant.
Mr. Ashish Shukla, Addl. Public Prosecutor for the State.

O R A L J U D G M E N T
(12th April 2007)

PER L.C. BHADOO, J

This appeal is directed against the judgment of conviction and order of sentence dated 9th September 2002 passed by 2nd Additional Sessions Judge (FTC), Janjgir in Sessions Trial No. 227/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code, sentenced him to

(पीछे देखिये)

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.R./1255 सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

undergo imprisonment for life and pay a fine of Rs.100/-, in default of payment of fine to further undergo two months' R.I.

2. Case of the prosecution, in brief, is that at about 6.00-7.00 a.m. in the morning of 28.2.2000 Manohar was collecting cow dung in his house. Bharat Satnami raised cries that Santram has committed the murder of Johitram, on which he went on the spot and saw that body of Johitram was lying covered with cloth. After removing the cloth, he saw that Johitram was lying dead and there was injury on the occipital region of Johitram, blood was oozing out of it. The incident was witnessed by PW-2 Munna Singh and PW-6 Bharatlal. Merg intimation (Ex.P/2) was given by Manohar (PW-1) and based on that First Information Report (Ex.P/1) was registered at Police Station-Shivrinarayan. Investigating officer after giving notice (Ex.P/5) to the Panchas, prepared inquest (Ex.P/6) on the body of deceased Johitram. Clothes of accused Santram were seized under Ex.P/8. Accused gave memorandum (Ex.P/9) and in pursuance of that one lathi, weapon of offence, was seized under Ex.P/10. Site plan (Ex.P/13) was prepared. Clothes of deceased Johitram were seized in a sealed packet under Ex.P/14. Body of deceased Johitram was sent for postmortem examination to Primary Health Centre, Shivrinarayan under Ex.P/16 where Dr. N. Prasad (PW-10) conducted postmortem and prepared postmortem report (Ex.P/15) in which he opined that cause of death was brain hemorrhage, mode of death was coma

(पीछे देखिये)

XI-HC-22

(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A./1255/ सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

due to head injury and death was homicidal in nature. After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Janjgir who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

3. Prosecution examined 13 witnesses at the trial in order to establish charge against the accused. Statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent.

4. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

5. We have heard Ms. Pushpa, learned counsel appearing on behalf of accused/appellant and Mr. Ashish Shukla, learned Addl. Public Prosecutor for the State/respondent.

6. Learned counsel for the accused/appellant has not disputed the homicidal death of Johitram. Moreover, the eyewitnesses PW-2 Munna Singh and PW-6 Bharatlal have categorically stated that accused Santram attacked the deceased with lathi on his head and other parts of the body, as a result of which he fell down and died spontaneously. The above evidence of these witnesses is

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ~~Cr.A./1255~~ **सन्** **200** 2

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — ५ —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

corroborated by the evidence of Dr. N. Prasad (PW-10) who conducted postmortem on the body of deceased Johitram and opined that deceased died due to brain hemorrhage and coma on account of head injury and death was homicidal in nature, therefore, it is established that death of Johitram was homicidal in nature.

7. As far as involvement of the accused/appellant in crime in question is concerned, the conviction is based on the evidence of eyewitnesses namely PW-2 Munna Singh and PW-6 Bharatlal. They have stated that on the date of incident in the morning Johitram was sitting on the culvert, at that time accused Santram was passing through culvert along with buffalo. He was carrying lathi in his hand. He attacked Johitram with that lathi, as a result of which fatal injuries were sustained by Johitram, he fell down and brain material was visible through the injury.

8. Learned counsel for the accused/appellant argued that the above witnesses have stated that they were present at the scene of occurrence and have admitted that they did not try to intervene when accused Santram was attacking Johitram, therefore, their conduct was unnatural, as such their presence at the scene of occurrence is doubtful.

(पीछे देखिये)

XI-HC-22

(23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...Cr.A.1255... सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9. Looking to the evidence of PW-2 Munna Singh and PW-6 Bharatlal, we are not convinced by the argument advanced by learned counsel for the accused/appellant for the reason that it depends upon person to person as to how he reacts to a particular situation. It is not necessary that a person witnessing the crime will always try to intervene in the matter. Moreover, in the present case the above two witnesses are independent witnesses and nothing has been elicited in the cross-examination which discredits the evidence of these two witnesses. Apart from that, PW-2 Munna Singh has categorically stated that he saw the accused attacking Johitram till death, he shouted and thereafter informed Manohar (PW-1), brother of the deceased. PW-6 Bharatlal has also stated that he witnessed the accused attacking Johitram with lathi and on cries being raised brother of deceased Manohar came there, by that time accused had already left the spot with weapon of offence lathi and when they went near Johitram, he was already dead. The evidence of these two witnesses stands corroborated by the medical evidence of Dr. N. Prasad (Pw-10) who conducted postmortem on the body of deceased Johitram and found that there was injury on the occipital region of Johitram and brain material was visible through the injury. He has stated that on account of head injury sustained by Johitram, he died spontaneously as a result of coma and hemorrhage. Therefore, in view of above we do not find any inconsistency in the evidence of PW-2 Munna Singh and PW-6

(पीछे देखिये)

XI-HC-22

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A./1255/ सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bharatlal and nothing has come on record to make the evidence of these two witnesses untrustworthy or unreliable.

10 Learned counsel for the accused/appellant argued that nothing has been brought on record to show that the accused had attacked Johitram with an intention to cause death.

11 In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have scrutinized the evidence. As per prosecution case, accused attacked Johitram with lathi on his head, as a result of which occipital bone was fractured and brain material was visible through the injury, therefore, looking to the manner in which the accused attacked Johitram with lathi on vital organ of the body, that too with such a force that deceased Johitram sustained fatal injuries as brain material was visible through the injury and he succumbed to the same, the intention of accused to cause death of Johitram is writ large.

12. In the result, the appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

(पीछे देखिये)